

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION

EDDIE A. POINDEXTER  
ADC #121353

PETITIONER

v.

No. 3:20-cv-9-DPM

DESTER PAYNE, Director,  
Arkansas Division of Correction

RESPONDENT

ORDER

1. Motion, *Doc. 41*, denied. Federal Rule of Criminal Procedure 35 does not apply in this § 2254 *habeas* case.

2. On *de novo* review, the Court adopts Magistrate Judge Harris's careful recommendation, *Doc. 39*, and overrules Poindexter's objections, *Doc. 40*. FED. R. CIV. P. 72(b) (1983 addition to advisory committee notes). Poindexter argues that he could not file a timely petition because he was in administrative segregation for many years without adequate access to a law library. *Doc. 40 at 1*. He moves to amend his petition to allege that those conditions caused the delay. *Doc. 43*. But as Magistrate Judge Harris notes, Poindexter managed to file many papers in his state case during that time. Thus, Poindexter hasn't shown that his placement in administrative segregation prevented him from pursuing his rights diligently. Because the amendment would be futile, Poindexter's motion, *Doc. 43*, is denied.

3. Poindexter's petition is untimely; and he hasn't cleared equitable tolling's high bar. His petition will therefore be dismissed with prejudice. No certificate of appealability will issue. 28 U.S.C. § 2253(c)(1)-(2).

So Ordered.

*D.P. Marshall Jr.*

D.P. Marshall Jr.  
United States District Judge

*11 May 2020*